

BEFORE THE ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

FILED

APR 20 2010

ADMINISTRATIVE HEARING
COMMISSION

DIRECTOR OF DEPARTMENT OF)
INSURANCE, FINANCIAL INSTITUTIONS)
AND PROFESSIONAL REGISTRATION,)

Petitioner,)

vs.)

MARCUS J. JANITCH,)

Respondent.)

Case No.: 09-0903 DI

PETITIONER'S BRIEF

Pursuant to the Commission's Order dated April 7, 2010, the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, through counsel, hereby submits the following Proposed Findings of Fact, Conclusions of Law and Legal Brief.

PROPOSED FINDINGS OF FACT

1. Petitioner is the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration ("Director"), whose duties include the regulation, supervision, and discipline of licensed bail bond agents pursuant to Chapter 374, RSMo.
2. Respondent was licensed by the Missouri Department of Insurance, Financial Institutions and Professional Registration ("Department") on August 27, 2003, as a bail bond agent, license number 0315101, and his license expired on August 28, 2009. *See Petitioner's Exhibit 1.*

3. On January 5, 2009, Special Investigator Les Hogue ("Hogue") mailed a letter to Respondent at 101 Green Forest Estates Drive, St. Peters, Missouri 63376, requesting an explanation regarding allegations of Theft/Stealing. Hogue requested a response by January 28, 2009. *See Petitioner's Exhibit 2.*
4. The January 5, 2009 letter was returned to Hogue as undeliverable.
5. Hogue contact Respondent and obtain a current address of 2751 Creekmont Lane, St. Louis, Missouri 63125. Hogue mailed a copy of the January 5, 2009 letter to Respondent.
6. Respondent did not respond to the January 5, 2009 letter.
7. On February 13, 2009, Hogue mailed a "Late Response" letter to Respondent at the 2751 Creekmont Lane address, again requesting an explanation regarding allegations of Theft/Stealing. Hogue requested a response by February 20, 2009. *See Petitioner's Exhibit 3.*
8. Respondent did not respond to the February 13, 2009 letter.
9. On February 24, 2009, Hogue sent a second "Late Response" letter to Respondent at the 2751 Creekmont Lane address, again requesting an explanation regarding allegations of Theft/Stealing. Hogue requested a response by March 2, 2009. *See Petitioner's Exhibit 4.*
10. Respondent did not respond to the February 24, 2009 letter.
11. On March 9, 2009, the Director issued a Subpoena Duces Tecum ordering Respondent to appear at the Department offices located at the Harry S Truman State Office Building, Room 540, 301 West High Street, Jefferson City, Missouri, on April 8, 2009, at 10:30 a.m. *See Petitioner's Exhibit 5.*

12. The Subpoena Duces Tecum was sent via certified mail to Respondent at 2751 Creekmont, St. Louis, Missouri 63125. A PS Form 3811, or "Green Card," was signed and returned to the Department. *See Petitioner's Exhibit 6.*

13. On April 8, 2009, at 10:30 a.m., Respondent failed to appear at the Department offices as ordered by the Subpoena Duces Tecum.

CONCLUSIONS OF LAW

14. The Administrative Hearing Commission has jurisdiction over this case pursuant to § 621.045, RSMo (Supp. 2009).

15. Section 374.210.2, RSMo (Supp. 2008) provides, in part:

If a person does not appear or refuses to testify, file a statement, produce records, or otherwise does not obey a subpoena as required by the director, the director may apply to the circuit court of any county of the state or any city not within a county, or a court of another state to enforce compliance.

* * *

The director may also suspend, revoke or refuse any license or certificate of authority issued by the director to any person who does not appear or refuses to testify, file a statement, produce records, or does not obey a subpoena.

16. Section 374.755.1, RSMo (Supp. 2009) provides, in part:

The director may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any license required by sections 374.695 to 374.755 or any person who has failed to renew or has surrendered his or her license for any one or any combination of the following causes:

* * *

(6) Violation of any provision of or any obligation imposed by the laws of this state, department of insurance, financial institutions and professional registration rules and regulations, or aiding or

abetting other persons to violate such laws, orders, rules or regulations, or subpoenas[.]

17. 20 CSR 100-4.100, Required Response to Inquiries by the Consumer Affairs Division, provides in relevant part:

* * *

(2) Except as required under subsection (2)(B)—

(A) Upon receipt of any inquiry from the division, every person shall mail to the division an adequate response to the inquiry within twenty (20) days from the date the division mails the inquiry. An envelope's postmark shall determine the date of mailing. When the requested response is not produced by the person within twenty (20) days, this nonproduction shall be deemed a violation of this rule, unless the person can demonstrate that there is reasonable justification for that delay.

(B) This rule shall not apply to any other statute or regulation which requires a different time period for a person to respond to an inquiry by the department. If another statute or regulation requires a shorter response time, the shorter response time shall be met. This regulation operates only in the absence of any other applicable laws.

LEGAL BRIEF

Sufficient legal and factual grounds exist for disciplining Respondent's bail bond agent license. Respondent's failure to respond to multiple inquiries by the Consumer Affairs Division and failure to appear before the Director or produce records as ordered by a subpoena are both cause to discipline Respondent's bail bond agent license.

A. Respondent's failure to respond to multiple inquiries by the Consumer Affairs Division is cause to discipline Respondent's bail bond agent license.

Respondent received three letters from Hogue, in which Hogue requested Respondent to explain criminal charges pending against him. *See Petitioner's Exhibits 2, 3, and 4.* Respondent did not respond to any of these letters. Title 20 CSR 100-

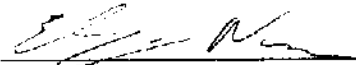
4.100(2)(A) states that “[u]pon receipt of any inquiry from the division, every person shall mail to the division an adequate response to the inquiry within twenty (20) days from the date the division mails the inquiry.” As Respondent has not responded to any of the three inquiries from Hogue, Respondent has violated 20 CSR 100-4.100(2)(A) and, as such, there is cause to discipline Respondent’s bail bond agent license pursuant to § 374.755.1(6), RSMo (Supp. 2009).

B. Respondent’s failure to appear before the Director or produce records as ordered by subpoena is cause to discipline Respondent’s bail bond agent license.

Respondent failed to appear before the Director or produce records as ordered by subpoena. Under § 374.210.2, RSMo (Supp. 2009), the Director may suspend, revoke or refuse a bail bond agent license for failure to appear and failure to produce records as ordered by subpoena. Thus, cause exists to discipline Respondent’s bail bond agent license for failing to appear before the Director and for failing to produce records as ordered by subpoena.

WHEREFORE, Respondent respectfully requests this Commission issue findings of fact and conclusions of law finding cause to discipline Respondent’s bail bond agent license pursuant to §§ 374.755.1(6) and 374.210.2, RSMo (Supp. 2009).

Respectfully submitted,


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Registration

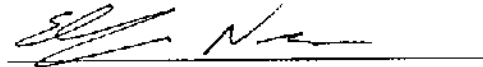
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ATTORNEY FOR PETITIONER
John M. Huff, Director
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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and correct copy of the foregoing Petitioner's Brief was mailed first class, with sufficient postage attached, via the United States Postal Service on the 20th day of April, 2010, to:

Marcus J. Janitch
Respondent
1732 South 5th Street
Apartment 1 South
St. Charles, Missouri 63303

A handwritten signature in dark ink, appearing to read "John M. Huff", is written over a horizontal line.